

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

RAY MOORE CONTRACTORS, INC.,

Respondent.

HUDALJ 94-0022-DB(LDP)

Decided: April 28, 1994

Simon Jeffrey Rosen, Esq.
For the Respondent

Sharon Swain, Esq.
For the Department

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. Part 24, Subpart G. On August 23, 1993, the Acting Regional Director of the Philadelphia Region of the U.S. Department of Housing and Urban Development ("HUD") notified Respondent Ray Moore Contractors, Inc. ("Respondent Contractors") and Willie Macon that HUD was issuing a Limited Denial of Participation ("LDP"). The LDP provided that Respondent Contractors could not participate in any HUD program in the jurisdiction of the HUD Philadelphia Region for a period of twelve months.

This action was taken based upon a guilty plea by Willie Macon to bribery concerning a program receiving federal funds, a violation of 18 U.S.C. § 666(a). At relevant times Willie Macon, it is alleged, was the owner and president of Respondent Contractors and it is alleged that Respondent Contractors is an affiliate of Willie Macon. By letter dated November 29, 1993, Respondent Contractors requested a hearing in this matter.

Because the action is based solely on a conviction, the hearing in this case is limited under 24 C.F.R. § 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated January 5, 1994, established a schedule for filing briefs. In compliance with that schedule, HUD filed its brief ("Brief") on January 24, 1994, Respondent Contractors filed its reply ("Reply") on February 14, 1994, and HUD filed its response ("Response") on February 17, 1994.

This matter is now ripe for decision.

Findings of Fact

1. Respondent Contractors is a contracting company that performed construction, renovation, rehabilitation and maintenance services for housing units and properties owned by the Philadelphia Housing Authority (PHA). Brief p. 1.

2. Willie Macon and his wife Evelyn Macon are the owners of Respondent Contractors and Willie Macon is President of Respondent Contractors. Brief p.1, p. 3, and p. 5.

3. PHA receives federal funds through HUD for the purpose of providing housing to low income persons. The federal funds administered by the PHA were used in funding contracts performed by Respondent Contractors. Brief p. 1.

4. On April 27, 1993, The United States Attorney for the Eastern District of Pennsylvania issued an information alleging that Willie Macon did knowingly and corruptly give approximately \$104,300 in cash to Walter Wood, an employee of the PHA who served at various times as Director of Central Maintenance and Director of Maintenance. These payments were for the purpose of having contracts awarded to Respondent Contractors for work to be performed on housing units and properties owned by the PHA, and were in violation of 18 U.S.C. § 666(a). Brief p.1-2; Brief Exhibit A.

5. On June 22, 1993, Willie Macon pled guilty to bribery concerning a program receiving federal funds, a violation of 18 U.S.C. § 666(a)(20). Brief p. 2; Exhibit B and B-1.

6. On September 28, 1993, Willie Macon was sentenced to 5 years probation, 3 months at a corrections facility, a \$30,000 fine together with a \$50.00 special assessment, and was ordered to pay restitution of \$151,590. Brief p. 3; Brief Exhibit G.

7. The August 23, 1993 letter notifying Respondent Contractors of the LDP also notified Willie Macon of an LDP, both based on his guilty plea. Brief p.3. Willie Macon is not contesting his LDP. Reply p. 1.

8. Respondent Contractors is located in impoverished North Philadelphia and employs thirty employees or more. It has a proven track record of honest, good work, enhancing, improving and enriching the community. Reply p. 1.

9. A corporate resolution dated October 26, 1993, states that two company principals, corporate secretary Ernest Peek and corporate treasurer John Battle, solely control Respondent Contractors' funds. Willie Macon has no control over Respondent Contractors' funds. Reply p. 2, and Reply Exhibit A. According to the foregoing a bank account was opened with Mr. Peek and Mr. Battle as co-signatories. Reply p. 1, Reply Exhibit B.

Discussion and Conclusions of Law

1. Respondent Contractors is Subject to LDP Under 24 C.P.R. Part 24

Willie Macon as President and owner of Respondent Contractors is both a participant and principal in covered transactions under HUD regulations. 24 C.F.R. § 24.105(m) and (p). Willie Macon was in control of Respondent Contractors at the time he committed the crimes that were the subject of his guilty plea and the justification of his LDP. Respondent Contractors is an affiliate of Willie Macon within the meaning of HUD regulations. 24 C.F.R. § 25.105(b). Respondent Contractors was specifically named and given notice that it is within the scope of the LDP. Brief Exhibit C; 24 C.F.R. § 24.324(a)(2).

2. There is Cause for Respondent Contractors' LDP

Willie Macon's guilty plea to the charge of bribery is an adequate basis to justify an imposition of an LDP upon Willie Macon and his affiliate, Respondent Contractors. 24 C.F.R. § 24.708(a)(8) and 24.305(a)(3). Willie Macon's guilty plea constituted adequate evidence that Willie Macon had committed bribery. 24 C.F.R. § 24.705(a) and (b) and 24.305(a). Accordingly, there is adequate cause to justify Respondent Contractors' LDP.

3. A One Year LDP is Warranted

In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. 24 C.F.R. § 24.115(a). Willie Macon pled guilty to bribery, which involved conduct which demonstrates a lack of honesty, trustworthiness, integrity and fair dealing. This conduct demonstrates a lack of responsibility and justifies one year LDP. Because Respondent Contractors is an affiliate of

Willie Macon, it is appropriate to include it in the LDP. 24 C.F.R. § 24.710(c).

The burden of proving that a particular affiliate is currently responsible and not controlled by the primary sanctioned party is on the affiliate. 24 C.F.R. § 24.710(c). A company debarred because of its affiliate status must demonstrate that it is presently responsible. *Dunton and Dunton Contracting, Inc.* HUDBCA No. 92-1767-DB (May 19, 1992).

Respondent Contractors contends that Willie Macon does not control Respondent Contractors because of the corporate resolution dated October 26, 1993, which provided that two company principals, not including Willie Macon, solely control the corporate funds. Respondent Contractors also points out that a bank account was opened in late October of 1993, with the two company principals, not including Willie Macon, as co-signatories. Respondent Contractors argues that the foregoing demonstrates and establishes that Willie Macon does not control the company and therefore it should not be subject to an LDP as his affiliate.

Respondent Contractors has not demonstrated that Willie Macon no longer controls Respondent Contractors. Willie Macon is still President and an owner of Respondent Contractors. Respondent Contractors has not provided sufficient evidence to establish that Respondent Contractors is no longer under the control of Willie Macon, nor has it shown that sufficient steps have been taken to insure that wrongdoing will not occur. Respondent Contractors has not provided sufficient evidence that it is sufficiently "walled off" from Willie Macon as to demonstrate that it is currently responsible. See *Dunton*.

Respondent Contractors also argues that public policy requires that the LDP not extend to it because it is located in an "impoverished and downtrodden area" and is the financial lifeblood of many employees. It is also pointed out that Respondent Contractors has done quality work and there is no evidence of wrongdoing by employees or others associated with it.

Although all of the foregoing is true, the purpose of the LDP is to protect the public from those who are not responsible. I conclude that a twelve month LDP with respect to Respondent Contractors serves this purpose of protecting the public interest and permits Respondent Contractors to demonstrate its honesty and trustworthiness.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists for a limited denial of participation affecting Ray Moore Contractors, Inc. within the jurisdiction of the HUD Philadelphia Regional Office

for a twelve month period from August 23, 1993.

SAMUEL A. CHAITOVITZ
Administrative Law Judge